

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THEODORE ITZKOWITZ,	:	
	:	
Plaintiff,	:	Index No. 07 CV 3783 (JGK)
	:	
ISRAEL DISCOUNT BANK OF NEW YORK,	:	
ISRAEL DISCOUNT BANK OF NEW YORK	:	
SEVERANCE PLAN FOR SPECIFIED	:	
EXECUTIVES, ISRAEL DISCOUNT BANK OF	:	
NEW YORK SEVERANCE PLAN, and ISRAEL	:	
DISCOUNT BANK OF NEW YORK DEFERRED	:	
COMPENSATION PLAN, and PENSION PLAN	:	
FOR EMPLOYEES OF ISRAEL DISCOUNT	:	
BANK OF NEW YORK	:	
	:	
Defendants.	:	

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I, EVE RACHEL MARKEWICH, pursuant to 28 U.S.C. §1746, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

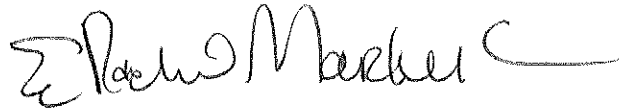
1. I am a member of MARKEWICH AND ROSENSTOCK LLP, attorneys for Plaintiff, Theodore Itzkowitz.

2. I submit this Declaration to place before the Court the following documents in conjunction with Itzkowitz' Opposition to Defendants' Motion to Dismiss Counts Three, Four and Five of the complaint.

EXHIBIT 1: Letter from Eve Rachel Markewich to Jennifer Rubin, dated April 9, 2007.

EXHIBIT 2: Correspondence from IDB to Itzkowitz regarding his Pension Benefits.

Dated: July 23, 2007  
New York, New York

A handwritten signature in black ink, appearing to read "Eve Rachel Markewich", with a long horizontal flourish extending to the right.

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EVE RACHEL MARKEWICH

# **EXHIBIT 1**

MARKEWICH AND ROSENSTOCK LLP

8 East 41<sup>st</sup> Street • Fifth Floor • New York, New York 10017  
tel: (212) 542-3156 fax: (212) 481-1761 *emarkewich@mrlawllp.com*

Lawrence M. Rosenstock  
Eve Rachel Markewich

Robert Markewich, of counsel

April 9, 2007

Jennifer B. Rubin, Esq.  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo P.C.  
Chrysler Center  
666 Third Avenue  
New York, New York 10017

Dear Jen:

REDACTED

At this time, we have no choice but to request the denials due us in response to Mr. Itzkowitz' claim letter dated December 8, 2006, so that we can proceed to Court to claim the full amounts due, plus penalties, interest and legal fees, and to make such other claims as we may have under the IDBNY Deferred Compensation Plan, the IDBNY Pension Plan and the IDBNY SERP, and the additional monies referenced in the second paragraph of this letter. Alternatively, if the Bank is still interested in resolving our differences once and for all, Mr. Itzkowitz will sign a full release (nothing more, and

Jennifer B. Rubin, Esq.  
April 9, 2007  
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**REDACTED**

Please provide us immediately with the requested formal denial of our claims letter, as well as the necessary forms for Mr. Itzkowitz to claim his benefits under the Pension Plan, the SERP and the Deferred Compensation Plan.

Very truly yours,



Eve Rachel Markewich

ERM:js

cc: Theodore Itzkowitz, Esq.

## **EXHIBIT 2**



June 1, 2007

Theodore Itzkowitz  
82 Orange Drive  
Jericho, NY 11753

Dear Mr. Itzkowitz:

We are writing to advise you of your rights for Vested Retirement Benefit, under the Pension Plan for Employees of Israel Discount Bank of New York. You may choose one of the following forms of payment shown below.

**Please note the following very important information:**

**You are a top 25 paid employee of the controlled group and therefore may be subject to Qualified Plan lump sum restrictions imposed for 2007 – our projections indicate that the funded current liability (FCL%) is less than 110% of actuarial assets as of 1/1/2007. If the 2007 funding valuation produces a FLC% of 110% or greater, the restrictions will be lifted. Until that time, the lump sum shown cannot be paid out as usual – PLEASE SEE SEPARATE ATTACHMENT FOR DETAILS.**

Your benefits for the Qualified Plan are payable as either I, II or III, below:

<b>I. Qualified Plan Benefits</b>		
<b>Retirement Allowance to Commence December 1, 2016 (Age 65)</b>		
	<b>Monthly Allowance Payable To:</b>	
<b>Form of Allowance</b>	<b>Member</b>	<b>Spouse Upon Member's Death</b>
Life Annuity	\$8,215.65	N/A
50% Joint and Survivor	\$7,470.49	\$3,735.25
100% Joint and Survivor	\$6,848.57	\$6,848.57
25% Lump Sum *	\$6,161.74	N/A
10 Year Certain & Continuous	\$7,865.66	\$7,865.66**
<p>* Plus a single payment of \$176,987.00 payable June 30, 2007.</p> <p>** If death occurs within the first 10 years of benefit commencement, this amount will be paid to the beneficiary for the remainder of the 10 year period.</p>		

<b>II. Qualified Plan Benefits</b>		
<b>Retirement Allowance to Commence July 1, 2007</b>		
	<b>Monthly Allowance Payable To:</b>	
<b>Form of Allowance</b>	<b>Member</b>	<b>Spouse Upon Member's Death</b>
Life Annuity	\$4,033.06	N/A
50% Joint and Survivor	\$3,780.59	\$1,890.30
<p><i>Note: Alternate benefit options are available upon request.</i></p>		



<b>III. Qualified Plan Benefits</b> <b>Lump Sum Payment as of June 30, 2007</b>		
<b>Interest Rate Basis</b>	<b>Interest Rate for April 2007</b>	<b>Amount of Lump Sum (subject to Top 25 Paid restrictions *)</b>
30-Year Treasury Rate (GATT)	4.87%	\$707,947.99
<p><i>Notes: 1) Lump sum amount must be recalculated if paid after June 30, 2007.</i></p> <p><i>2) The RR 2001-62 mortality table was used to calculate the lump sum, as mandated by the IRS in Revenue Ruling 2001-62 for lump sum payments on or after December 31, 2002.</i></p> <p><i>* 3) The projected Funded Current Liability Percentage for the Pension Plan as of 1/1/2007 is less than 110% and therefore restrictions may exist on lump sums paid to the 25 highest paid employees of the controlled group. This lump sum CANNOT be paid as usual until an actual determination is available - Please see separate memo for more details.</i></p>		

The amounts given in this letter are based on the following information:

Birth date:	November 30, 1951
Social Security Number	[REDACTED]
Vested Benefit Commencement Date:	July 1, 2007
Credit Service:	25 yrs
Average final compensation:	\$206,000.04

Please note, if you elect either the life annuity or a lump sum payment, your spouse must execute a Spouse's Consent form, which must be signed before a notary public or witnessed by an officer in the Personnel Department.

If you elect a lump sum payment you must complete a "Direct Rollover Application Form" and a "Certification of a Participant or Spousal Beneficiary Electing An Eligible Rollover Distribution".

If you elect a monthly retirement allowance you may have your taxes withheld from your monthly check by completing IRS form W-4P which is enclosed.

Please complete the enclosed Election of Benefits form and return it to us in the envelope provided together with the appropriate forms.

A Summary Plan Description is also enclosed.

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Re: Mr. Theodore Itzkowitz

In addition, you are eligible for a SERP benefit payable as a lump sum, shown below. **(PLEASE NOTE THAT SERP LUMP SUM NOT PAYABLE UNTIL JULY 1, 2007).** The equivalent monthly life annuity payable December 1, 2016 (NRD) is \$1,058.85. The SERP benefit calculation is based on your pay deferred under the Deferred Compensation Plan and pay in excess of the statutory pay limits imposed in the qualified plan.

SERP Benefit		
Lump Sum Payment as of July 1, 2007		
Interest Rate Basis	Interest Rate for July 2006	Lump Sum
30-Year Treasury Rate (GATT)	5.13%	\$86,996.25
<p><i>Notes: 1) Lump sum amount should be recalculated if paid after July 2007.</i></p> <p><i>2) The RR 01-62 mortality table was used to calculate the lump sum, as mandated by the IRS in Revenue Ruling 2001-62 for lump sum payments on or after December 31, 2002.</i></p> <p><i>3) The lump sum was determined in accordance with Section 409A of the Code such that the distribution of the SERP lump sum cannot be paid out until the earlier of (i) the end of the 6-month period following date of termination or (ii) death. The SERP lump sum was determined as of the end of the month of termination (using lump sum rate in effect for the second month prior to termination date), with interest (at lump sum rate) applied through payment date (no earlier than 6 months from date of termination, or first day of 7th month).</i></p>		

Please feel free to address any questions you may have concerning your retirement and the above benefits to me.

Very truly yours,



Susan Rinaldi  
First Vice President  
For The Plan Administrator

Enclosed:

- 1 Copy of Application for Retirement
- 1 Copy of Election of Benefits Form
- 1 Direct Rollover Application Form
- 1 Certification of a Participant or Spousal Beneficiary  
Electing an Eligible Rollover Distribution
- 1 Copy of Special Tax Notice
- 1 Copy of W-4P Form
- 1 Copy of Information for Spouses
- 1 Copy Spousal Consent Form
- 1 Copy of Comparison of Relative Value
- 1 Copy Summary Plan Description
- 1 Copy of Notice of Participant's Right to Defer Benefit Commencement

## **Benefit Restrictions for 25 Highest Paid Employees**

IRS nondiscrimination regulations significantly restrict the payment of benefits to certain "highly compensated employees." This document explains how these regulations affect highly compensated employees' benefits and summarize certain acceptable arrangements that may be used to allow highly compensated employees to receive restricted benefits.

### **1. Who is affected?**

The nondiscrimination regulations affect the highest paid 25 highly compensated employees (as that term is defined by the IRS). The highest paid 25 employees (or larger number chosen by the employer) include any current highly compensated employee or former highly compensated employee who had the largest total compensation in the current or any prior year.

### **2. What are the Benefit Restrictions?**

The IRS' restrictions apply primarily to single lump sum distributions when:

- After payment of the highly compensated employee's benefits, the value of plan assets is less than 110% of the value of its current remaining liabilities; or
- The value of the highly compensated participant's entire benefit is 1% or more of the value of the plan's current liabilities before distribution of those benefits.

If a highly compensated participant's benefits are subject to restrictions, annual payments to the participant generally will be limited to the amount of the participant's accrued benefit if it were paid as a single life annuity.

*Example. Susan is a "restricted participant" in the IDB Pension Plan. She is 65 years old, and her annual pension benefit to be paid over her lifetime, determined under the IDB Pension Plan pension formula, is \$50,000. Accordingly, her nonrestricted benefit amount is \$50,000 because the amount of benefit payable to her as a straight life annuity is \$50,000.*

For convenience, this document refers only to a lump sum benefit, but the restrictions applicable to the highest paid 25 employees generally will apply to any benefit Form that will pay annual benefits in excess of a straight life annuity form of benefit.

### **3. Are there any ways that permit the payment of a restricted amount?**

A participant is permitted to take a single sum distribution of his or her benefits if he makes acceptable arrangements to repay any portion of the restricted amount if it is ever needed to adequately fund the plan. Acceptable arrangements include:

- Establishing an escrow account
- Pledging to repay the restricted amount from an IRA
- Posting a bond

- Obtaining a bank letter of credit

Alternatively, a participant may utilize any other method to ensure adequate provision for repayment of the Restricted Amount that may be approved by the IRS.

(a) Escrow Account Arrangement/IRA Arrangement

If a participant uses an **escrow account arrangement**, he must place 125% of the restricted amount (the amount that he normally would not have received, due to the benefit restriction rules) in escrow.

*For example: On June 1, 2006, Susan decides to take a single sum distribution of \$500,000 from the IDB Pension Plan. The restricted amount of this distribution is \$450,000 (\$500,000 minus the \$50,000 nonrestricted amount) to receive the entire \$500,000 distribution, Susan must deposit \$562,500 ( $\$450,000 \times 1.25$ ) into an escrow account.*

Similarly, a participant may secure his repayment obligation with assets held in an IRA (which may include the amount distributed from the IDB Pension Plan) established by him with the agreement of the IRA custodian. However, the total value of the IRA (plus the supplemental escrow, if applicable) must be equal to 125% of the restricted amount (a supplemental escrow account may be used to supplement the value held by the IRA, if necessary).

If the market value of the plan assets falls below 110% of the restricted amount, the participant must deposit additional funds to bring the account's value up to 125% of the restricted amount. However, if at any time, the amount in escrow or the IRA exceeds 125% of the restricted amount, the participant can withdraw the excess amount. In addition, as long as the value of the account is at least 110% of the restricted amount, the participant may receive any income earned on the escrowed funds.

If a restricted benefit payment is rolled over to an IRA, it will be subject to all of the rules applicable to distributions from an IRA. This could include an excise tax if a distribution from the IRA is made before the participant attains age 59½.

(b) Bond

If a participant wants to **post a bond** to secure the restricted amounts, the amount of the bond must equal at least 100% of the restricted amount. The participant must obtain the bond from an insurance company, bonding company or other agency approved by the U.S. Treasury Department as an acceptable agency for securing federal bonds.

(c) Bank Letter of Credit

As a final alternative, a participant may obtain a **bank letter of credit** in an amount equal to at least 100% of the restricted amount.